

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

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31 AUG 2004

Applicant's or agent's file reference JPH/JM/JGM/P01PCT	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEAA16)	
International application No. PCT/GB 03/02505	International filing date (day/month/year) 09.06.2003	Priority date (day/month/year) 07.06.2002
International Patent Classification (IPC) or both national classification and IPC E01H1/12		
Applicant MAGINNESS, Joseph Gabriel		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 8 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

 These annexes consist of a total of 5 sheets.



3. This report contains indications relating to the following items:

I	<input checked="" type="checkbox"/>	Basis of the opinion
II	<input type="checkbox"/>	Priority
III	<input checked="" type="checkbox"/>	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
IV	<input type="checkbox"/>	Lack of unity of invention
V	<input checked="" type="checkbox"/>	Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
VI	<input type="checkbox"/>	Certain documents cited
VII	<input type="checkbox"/>	Certain defects in the international application
VIII	<input type="checkbox"/>	Certain observations on the international application

EPO - DG 1

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Date of submission of the demand 07.01.2004	Date of completion of this report 30.08.2004
Name and mailing address of the International preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Geisenhofer, M Telephone No. +49 89 2399-2717 

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. **PCT/GB 03/02505**

I. Basis of the report

1. With regard to the elements of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

2-12 as originally filed
1 filed with telefax on 15.06.2004

Claims, Numbers

18 (part), 19-21 filed with telefax on 07.01.2004
1-17, 18 (part) filed with telefax on 15.06.2004

Drawings, Sheets

1/7-7/7 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. **PCT/GB 03/02505**

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos. 19-21

because:

☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):

☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 19-21 are so unclear that no meaningful opinion could be formed (*specify*):

see separate sheet

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for the said claims Nos.

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

☐ the written form has not been furnished or does not comply with the Standard.

☐ the computer readable form has not been furnished or does not comply with the Standard.

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-18
	No: Claims	

Inventive step (IS)	Yes: Claims	
	No: Claims	1-18

Industrial applicability (IA)	Yes: Claims	1-18
	No: Claims	

2. Citations and explanations

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. **PCT/GB 03/02505**

see separate sheet

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/GB03/02505

The following documents are referred to in this report:

D1: US-A-3 740 086 (cited in the search report)

D2: DE-A-29816807U (cited by the applicant in the description)

Re Item III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. Claims 19 - 21 only contain references to the drawings such that these claims cover a nearly indefinite number of possible combinations of features.
Thus, it is impossible to determine the scope of protection of these claims without doubt and as a consequence thereof no meaningful opinion can be given with respect to novelty and inventive step of these claims.

Re Item V

Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

2. The present application does not meet the requirements of Article 33(1) PCT, because the subject-matter of independent claim 1 does not involve an inventive step in the sense of Article 33(3) PCT.
 - 2.1 The document D1 is considered to represent the closest prior art. D1 discloses in figure 5 a hand-held portable (cf. column 2, line 1) container comprising a housing 16 having a shell 14 releasable (cf. column 2, lines 41 - 43) mounted thereon. The shell has an opening for receiving excreta and an impaling means including a plurality of tines 22, 24 disposed within the shell for impaling the excreta (cf. figure 3).
 - 2.2 The subject-matter of independent claim 1 differs from the device known from D1 in that an aerosol cartridge including a freezing component is mounted on the housing and the shell has an aperture for receiving the aerosol from the aerosol cartridge.

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/GB03/02505

2.3 Since the consistency of dog droppings may sometimes be too weak to pick it up using the device known from **D1**. When the device known from **D1** is used with droppings of a weak consistency, it is not possible to keep the dropping within the shell but it falls of. Thus, the skilled person would try to find a suitable possibility to improve the dropping's consistency when pressing the impaling means into the weak dropping.

2.4 The document **D2** offers a solution to this problem: The dropping is partially frozen to improve its consistency. Thus, it hardens and can be handled using e. g. the device known from **D1** (cf. page 3, lines 3 - 5: "es kann eine der oben genannten Gerätschaften benutzt werden" and page 2, lines 3 - 6). In particular, **D2** mentions in line 6 of page 2 the use of a device of the type as described in **D1** ("Kotspeicherräume in rohrförmigen Gehäusen").

2.5 Therefore, the skilled person would incorporate an aerosol cartridge including a freezing component and mount it on the housing. Obviously, he must provide an aperture in the shell to deliver the aerosol to the dropping.
The freezing component allows to harden the dropping when pressing the impaling means into the weak dropping such that the dropping does not fall of but adheres to the impaling means.
Thus, he would arrive at the subject-matter of independent claim 1 without need of inventive activity.

2.6 It is to be noted that the different priority dates of two documents do not hinder the skilled person to read both documents, understand their teachings and combine these teachings.

2.7 Furthermore, it is to be noted that the skilled person would find a suitable possibility to fix the aerosol cartridge on the device known from **D1**. It is not impossible to mount the cartridge known from **D2** on the device known from **D1** even if **D2** does not provide any specific teaching (n.b.: **D2** only teaches the use of a freezing component, not how the cartridge is to be installed).
Since claim 1 of the application does not specify the location where the cartridge is mounted, all possible locations fall within the scope of protection of claim 1.

2.8 Thus, he would arrive at the subject-matter of independent claim 1 without need of

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/GB03/02505

inventive activity by combining the teachings of documents **D1** and **D2**.

3. The same reasoning applies to independent method claim **18** which therefore cannot be considered to involve an inventive step.
4. The present application does not meet the requirements of Article 33(1) PCT as dependent claims **2 - 8, 10 - 15** do not contain inventive subject-matter because a combination of the features set out in these claims with the features of the independent claim to which they refer is only an obvious modification of the device known from **D1**.
A person skilled in the art would employ the combination of features, if required, on the basis of his expert knowledge even if they are not disclosed in or obvious from the cited state of the art (see documents **D1** and **D2**).
- 5.1 The additional features of dependent claims **9, 16** and **17** are not disclosed in their present form in any of the documents cited in the search report. Thus, the subject-matter of these claims is novel.
- 5.2 Nevertheless, it is not clear which advantage can be obtained by these special features disclosed in claims **9, 16** and **17**. Thus, the subject-matter of these claims cannot be considered to be inventive.

Further remarks

Certain observations on the international application

6. The application does not meet the requirements of Article 6 PCT, because claims **5** and **12 - 14** are not clear.
- 6.1 Claim **5** does not meet the requirements of clarity in that the matter for which protection is sought is not defined.
The claim attempts to define the subject-matter in terms of the result to be achieved (shells are nestable). Nevertheless, it is obscure how this effect is obtained.
- 6.2 The same applies to claim **13** which attempts to define the subject-matter in

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/GB03/02505

terms of the result to be achieved (container may be used with different aerosol cartridges).

- 6.3 The term "the nozzle of the aerosol cartridge" used in claim 12 lacks an antecedent.
- 6.4 Claim 14 refers directly to claim 1 where an aperture is defined. In claim 14 a further aperture is defined and it is not clear whether this aperture is a further aperture or is identical to the aperture already defined in claim 1.
7. Contrary to Rule 6.2 b) PCT only a part of the features of the claims is provided with reference signs placed in parentheses to increase the intelligibility of the claims.
8. Claims 1 and 18 are not supported by the description since the use of an aerosol cartridge including a freezing component is presented as being optionally ("preferably") in the description on page 2 and 3 (Article 6 PCT).
9. Due to the replacement of page 1 of the description, the prior art discussion is not comprehensive since parts of the originally filed description were omitted without adapting the neighbouring paragraphs.